

No. 12497

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United States  
Court of Appeals  
for the Ninth Circuit.

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UNITED STATES OF AMERICA,

Appellant,

vs.

BRYANT ESSICK,

Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California,  
Central Division.

FILED

APR 25 1950

PAUL P. O'BRIEN,  
CLERK







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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

### For Appellant:

ERNEST A. TOLIN,  
United States Attorney,

E. H. MITCHELL and  
EDWARD R. McHALE,  
Assistants U. S. Attorney,

EUGENE HARPOLE,  
Special Attorney,  
Bureau of Internal Revenue,  
600 U. S. Post Office and Court House  
Bldg., Los Angeles 12, Calif.

### For Appellee:

ZEUTZIUS & STEFFES,  
518 Security Bldg.  
510 S. Spring St.  
Los Angeles 13, Calif.

In the District Court of the United States in and  
for the Southern District of California, Central  
Division.

No. 9001-Y

BRYANT ESSICK,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### COMPLAINT

(For Recovery of Federal Gift Taxes)

Plaintiff, Bryant Essick, complains and alleges:

#### I.

Plaintiff is a citizen of the United States, a resident of the State of California, in Los Angeles County, City of Los Angeles, and within the jurisdiction of this Court.

#### II.

This is a civil action, arising under the internal revenue laws of the United States, and is for the recovery of federal gift taxes and interest thereon alleged to have been erroneously and illegally assessed against and collected from plaintiff. Jurisdiction is conferred by Title 28, United States Code, section 1346.

#### III.

Plaintiff, throughout his life, has been and now

is domiciled in California. On August 30, 1940, he married Jeanette Marie Essick. At all times since, they have resided together as husband and wife, in Los Angeles, California.

#### IV.

At the time of his said marriage, and until March 1, 1941, plaintiff owned as his separate property an undivided one-half partnership interest in Essick Manufacturing Company (known also as Essick Machinery Company), an active business co-partnership whose assets consisted of real and personal property situated at Los Angeles, California.

#### V.

By deed dated, executed and delivered on March 1, 1941, plaintiff granted, transferred and conveyed to his said wife, by way of gift, a present, existing and equal community property interest in his said undivided one-half partnership interest as it existed on said date. This deed was accepted by plaintiff's wife, and it was recorded on March 26, 1941, in the office of the County Recorder for Los Angeles County, California. A copy of the deed was furnished to the Commissioner of Internal Revenue through his examining revenue agent.

#### VI.

By virtue of the delivery and acceptance of the deed, as aforesaid, plaintiff and his wife thereupon and thereafter held said property as community

property under the laws of California. One-half of the property so transferred constituted, under both California and federal applicable laws, a valid completed gift from plaintiff to his wife of a one-fourth interest in the entire partnership of said Essick Manufacturing Company.

## VII.

Plaintiff's wife's said one-half community property interest became, was and is entitled to the protection of the "due process" clause of the Fifth Amendment, as to the Federal Government, and of the Fourteenth Amendment, as to the State of California. Plaintiff's one-half community property interest was and is entitled to the same protection.

## VIII.

The fair market value of the interest in said property transferred and conveyed by plaintiff to his wife was equal in amount to the fair market value of the community property interest which plaintiff retained, and said transfer of March 1, 1941, to plaintiff's wife was subject to gift tax under Sec. 1000(a), I.R.C., and taxable on such basis.

## IX.

On or about April 3, 1942, plaintiff filed with the Collector of Internal Revenue at Los Angeles a gift tax return for the calendar year 1941 on Treasury Department Form 709, reporting thereon the aforesaid transfer to his wife under date of March 1, 1941, at a value on said gift date of \$43,-

189.37, less an annual exclusion of \$4,000, and net taxable gifts for 1941 of \$39,189.37, against which plaintiff claimed his then allowable specific exemption of \$40,000 to the extent of said net taxable gifts. Said return was accepted by the Commissioner of Internal Revenue as filed, and more than four years passed without any question being raised by the Commissioner, or his subordinates, with respect to the correctness of said 1941 return.

### X.

Between March 1, 1941, and December 31, 1943, inclusive, plaintiff made no further reportable taxable gifts; but on November 16, 1943, plaintiff and his said wife, Jeanette Marie Essick, in accordance with permissive provisions of California law, entered into a written agreement entitled Property Settlement Agreement, which was duly executed and acknowledged by each of them and recorded in the office of the Los Angeles County Recorder at Los Angeles, California, on or about November 22, 1943.

### XI.

By said Agreement of November 16, 1943, plaintiff and his wife, among other things, pursuant to the laws of California, changed and converted their entire aforesaid community property partnership interest in the Essick Manufacturing Company (aka Essick Machinery Company) into the separate property of each as tenants in common and agreed that each should hold his and her re-

spective undivided one-half interest free from any and all community property rights or privileges of the other spouse.

## XII.

On October 22, 1945, plaintiff filed a donor's gift tax return with Harry C. Westover, as Collector of Internal Revenue at Los Angeles, California, for the calendar year 1943, reporting therein all of the facts with reference to the Agreement of November 16, 1943, attaching a true copy of said Agreement as part of the return, together with a statement of reasons why, in plaintiff's view of the transaction, no taxable gift occurred in 1943. The return indicated that there were no gifts for 1943, that there were no net gifts and that there was no gift tax due.

## XIII.

By statutory ninety-day notice, dated November 4, 1946, the Commissioner of Internal Revenue advised plaintiff, by registered mail, that he had determined a deficiency in gift tax against plaintiff as donor, for the calendar year 1943, of \$6,713.51 which, with interest thereon of \$1,280.68, was thereafter assessed against plaintiff who, on May 29, 1947, pursuant to demand therefor, paid said tax and interest to Harry C. Westover, as Collector of Internal Revenue, at Los Angeles, California, in the aggregate amount of \$7,994.19. Said Collector promptly paid said amount into the Treasury of the United States for the use and benefit of the United States.



## XIV.

The Commissioner's said determination of gift tax deficiency for 1943 was based on the erroneous theory or conclusion that, so far as here material, the aforesaid "agreement of November 16, 1943, by which certain property previously held as community property was transmuted into tenancies in common," involved a taxable transfer by plaintiff to his wife in 1943 of a one-fourth interest in the Essick Manufacturing Company co-partnership. The Commissioner, in his said determination for the year 1943, reduced the full value of the one-fourth partnership interest, as found by him for November 16, 1943, by the full value of said one-fourth partnership interest as it existed on March 1, 1941, the partnership interest having grown in size and value between the two dates last named.

## XV.

In his aforesaid deficiency notice of November 4, 1946, the Commissioner determined that plaintiff completed on November 16, 1943, the transfer of a full one-fourth interest in Essick Manufacturing Company of a value of \$100,000; that the same one-fourth interest was only partially transferred on March 1, 1941; that the value of the same interest on March 1, 1941, was \$43,189.37 and that the latter amount should be deducted from said \$100,000, together with another item of \$3,421.60; that the net value of said 1943 alleged gift was \$43,389.03 and that plaintiff was liable for a gift tax thereon of \$6,713.51.

## XVI.

The Commissioner's aforesaid determination was erroneous and his assessment of gift tax and interest against plaintiff based thereon was and is erroneous, illegal and contrary to the applicable provisions of the Internal Revenue Code, California laws and the "due process" clause of the Fifth Amendment of the Constitution of the United States, in that the conversion of said community property partnership interest into a tenancy in common on November 16, 1943, did not involve any transfers of community property by way of gift from plaintiff to his wife within the meaning of any provisions of the Internal Revenue Code and/or California laws. To the extent that Treasury Regulations 108, Sec. 86.2(c) purport to cover as taxable the conversion into tenancies in common of community property between spouses, subsequent to 1942, they are invalid as applied to plaintiff and his wife under the facts involved. Furthermore, Sec. 1000(d), I.R.C., does not impose, and cannot validly be applied to require, gift tax liability against plaintiff for 1943 under the facts alleged in this complaint. In any event, the facts and "due process" clause would require that plaintiff's wife's community property interest in said partnership be treated in 1943, under and for the purposes of Sec. 1000(d), as having been derived originally from her "separate property," her interest having been received by her in March, 1941, by way of a taxable transfer by gift within the



meaning of Sec. 1000(a) and (b), I.R.C., as the same then existed.

If Sec. 1000(d) (which was first made part of the Internal Revenue Code by the Revenue Act of 1942, and made applicable only to 1943 and subsequent years) is applicable to the aforesaid Property Settlement Agreement of November 16, 1943, then Sec. 1000(d) is unconstitutional and invalid as applied to the November 16, 1943, transaction, in that said Sec. 1000(d) operates to deprive both plaintiff and his wife of the property and vested rights of each in respect of property without due process of law in violation of the prohibition there against contained in the Fifth Amendment of the Constitution. The assessment against and collection from plaintiff of the gift tax in question, for 1943, also constitute the unlawful taking of private property for public use without just compensation, and involve the retroactive abrogation and confiscation of lawful rights, property and property interests acquired in 1941, through the medium of arbitrary and discriminatory legislation.

#### XVII.

On June 14, 1948, plaintiff duly filed with the aforementioned Collector of Internal Revenue at Los Angeles a verified claim for the refund of said gift tax and interest aggregating \$7,994.19 illegally and erroneously collected from plaintiff, as aforesaid, together with interest thereon from May 29, 1947. In his said claim for refund, plaintiff set forth the facts and grounds upon which plaintiff relied in support thereof.

## XVIII.

The facts and grounds alleged in this complaint were also set forth as facts and grounds in support of the refund claim described above.

## XIX.

More than six months have expired from the date of the filling of said refund claim by plaintiff, and the Commissioner of Internal Revenue has not rendered a decision thereon.

## XX.

Neither the sum of \$7,994.19, above mentioned, nor any part thereof, has been refunded to plaintiff.

Wherefore, plaintiff prays judgment against defendant for the sum of \$7,994.19, with interest thereon from May 29, 1947, according to law, plus costs.

ZEUTZIUS & STEFFES,  
/s/ GEO. H. ZEUTZIUS,  
/s/ A. P. G. STEFFES,  
Attorneys for Plaintiff.

[Endorsed]: Filed December 15, 1948.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT AND  
FOR DISMISSAL WITH PREJUDICE

The defendant moves that a summary judgment in favor of the defendant and a judgment of dismissal with prejudice be entered in the above entitled action.

This motion is made upon the ground that the complaint fails to state a claim upon which relief can be granted.

It is further made upon the complaint in this case, upon the points and authorities hereto attached, and upon such other evidence, briefs or argument, oral or written, as may be indicated or as may be directed by the Court.

Dated: April 22, 1949.

JAMES M. CARTER,  
United States Attorney.

E. H. MITCHELL and  
EDWARD R. McHALE,  
Assistant United States  
Attorneys.

EUGENE HARPOLE,  
Special Attorney, Bureau of  
Internal Revenue.

By /s/ E. H. MITCHELL,  
Attorneys for Defendant.

[Endorsed]: Filed April 22, 1949.

[Title of District Court and Cause.]

PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

Plaintiff, by his attorneys, moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for a summary judgment in his favor against defendant for \$7,994.19, together with interest thereon from May 29, 1947, according to law, and for costs.

This motion is made upon the ground that upon the complaint and files herein, including the affidavit of Bryant Essick together with all exhibits, there is no genuine issue as to any material fact, and plaintiff is entitled to judgment as a matter of law.

Plaintiff also relies upon such other grounds as may be advanced at the hearing of this motion, as well as any other matters or documents which may be received by the Court in connection herewith.

/s/ GEO. H. ZEUTZIUS,

/s/ A. P. G. STEFFES,

Attorneys for Plaintiff.

[Endorsed]: Filed June 24, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF PLAINTIFF, BRYANT ES-  
SICK, IN SUPPORT OF HIS MOTION  
FOR SUMMARY JUDGMENT.

State of California,  
County of Los Angeles—ss.

Bryant Essick, being first duly sworn, deposes and says that he is the plaintiff in the above entitled action and, if called upon as a witness in this case, would testify, and does hereby state in support of his motion for summary judgment, as follows:

He is a citizen of the United States, a resident of the State of California, Los Angeles County, City of Los Angeles. Throughout his life, he has been and now is domiciled in California. On August 30, 1940, he married Jeanette Marie Essick. At all times since then, he and his wife have resided together as husband and wife, and have been domiciled in Los Angeles, California.

At the time of his said marriage, and until March 1, 1941, he owned as his separate property an undivided one-half partnership interest in Essick Manufacturing Company (known also as Essick Machinery Company), an active business partnership whose assets consisted of real and personal property situated at Los Angeles, California.

By deed dated, executed and delivered on March 1, 1941, affiant (hereinafter referred to as plaintiff) granted, transferred and conveyed to his said

wife, by way of gift, a vested, present, existing and equal community property interest in his said undivided one-half partnership interest, as it existed on March 1, 1941. This deed was accepted by plaintiff's wife, and it was recorded on March 26, 1941, in Book 18300, at Page 129 of Official Records, County of Los Angeles, State of California. A copy of the deed was furnished to the Commissioner of Internal Revenue through his examining revenue agent. Likewise, a true copy of the same recorded deed is attached hereto, marked Exhibit A, and by reference is made part hereof. This deed was recorded as Document No. 1055 and bore an endorsement directing that the Recorder mail the deed after its recordation to Mrs. Bryant Essick, plaintiff's said wife. The original deed, after being recorded, was in fact mailed to and received by Mrs. Bryant Essick in an envelope of the County Recorder, postmarked April 7, 1941, which said envelope and deed have been retained and will be produced for inspection upon request.

Following the execution and delivery of the aforesaid deed of March 1, 1941, which was accepted by plaintiff's wife, plaintiff and his wife thereupon and thereafter held said property as their community property until November 16, 1943, when they executed an Agreement with respect thereto, as hereinafter set forth. One-half of the property so transferred on March 1, 1941, into the community property of plaintiff and his said wife, constituted a valid completed gift from plaintiff to his wife



of a one-fourth interest in the entire partnership of the Essick Manufacturing Company.

The fair market value of the interest in said property transferred and conveyed on March 1, 1941, by plaintiff to his wife was equal in amount to the fair market value of the interest which plaintiff retained therein, and said transfer of March 1, 1941, to plaintiff's wife was subject to gift tax and was taxable on such basis. On or about April 3, 1942, plaintiff filed with the Collector of Internal Revenue, at Los Angeles, a donor's gift tax return for the calendar year 1941 on Treasury Department Form 709, reporting thereon the aforesaid transfer of property to his wife under date of March 1, 1941, at a value on said gift date of \$43,189.37, less an annual exclusion of \$4,000, and resulting net taxable gifts for 1941 of \$39,189.37, against which plaintiff claimed his then allowable specific exemption of \$40,000 to the extent of said \$39,189.37 of net taxable gifts. This 1941 gift tax return was accepted by the Commissioner of Internal Revenue as filed and no question was ever raised by the Commissioner, or his subordinates, with respect to the correctness of said 1941 return, until July 29, 1946, when the Internal Revenue Agent in Charge at Los Angeles issued a thirty-day letter covering an examination of plaintiff's gift tax return filed for the subsequent year of 1943, as hereinafter described.

Between March 1, 1941, and December 31, 1943, inclusive, plaintiff made no further reportable tax-

able gifts; but, on November 16, 1943, plaintiff and his said wife, Jeanette Marie Essick, entered into a written agreement entitled Property Settlement Agreement, which was duly executed and acknowledged by each of them and recorded in the office of the Los Angeles County Recorder at Los Angeles, California, on November 22, 1943, as Document No. 772, in Book 20417, at Page 355 of Official Records of Los Angeles County. A true copy of said Property Settlement Agreement, executed November 16, 1943, marked Exhibit B, is attached hereto and by reference made part hereof.

By said Property Settlement Agreement of November 16, 1943, plaintiff and his wife, among other things, converted their entire aforesaid community property partnership interest in the Essick Manufacturing Company (aka Essick Machinery Company) into the separate property of each as tenants in common and agreed that each thereafter should hold his and her respective undivided one-half interest free from any and all community rights or privileges of the other spouse.

On October 22, 1945, plaintiff filed a donor's gift tax return with the Collector of Internal Revenue at Los Angeles, California, for the calendar year 1943, reporting therein all of the facts with reference to the aforesaid Agreement of November 16, 1943, and attaching a true copy of said Agreement as part of the return, together with a statement of the reasons why, in plaintiff's view of the transaction, no transfer of community prop-



erty by way of gift occurred in 1943. The return indicated that there were no gifts for 1943, that there were no net gifts and that there was no gift tax due, but that it was filed because the provisions of Gift Tax Regulation 108, Sec. 86.2(c) asserted that divisions of community property were taxable.

By statutory 90-day notice, dated November 4, 1946, the Commissioner of Internal Revenue advised plaintiff, by registered mail, that he had determined a deficiency in gift tax against plaintiff, as donor, for the calendar year 1943, of \$6,713.51 which, with interest thereon of \$1,280.68, was thereafter assessed against plaintiff who, on May 29, 1947, pursuant to demand therefor, paid said tax and interest to the Collector of Internal Revenue at Los Angeles, California, in the aggregate amount of \$7,994.19. Upon information and belief, plaintiff states that said Collector promptly paid said amount into the Treasury of the United States for the use and benefit of the United States. A true copy of the Commissioner's aforesaid 90-day deficiency notice, dated November 4, 1946, marked Exhibit C, is attached hereto and by reference is made part hereof.

In his said notice of deficiency determination for 1943, the Commissioner asserted that the aforesaid "agreement of November 16, 1943, by which certain property previously held as community property was transmuted into tenancies in common," involved a taxable transfer by plaintiff to his wife

in 1943 of a one-fourth partnership interest in the Essick Manufacturing Company partnership. The Commissioner, in his said deficiency determination for the year 1943, reduced the full value of the one-fourth partnership interest, as found by him for November 16, 1943, by the full value of said one-fourth partnership interest as it existed on March 1, 1941, the partnership interest having grown in size and value between the two dates.

In his aforesaid deficiency notice of November 4, 1946, the Commissioner further asserted as follows: That plaintiff completed on November 16, 1943, the transfer of a full one-fourth interest in Essick Manufacturing Company of a value of \$100,000; that the same one-fourth interest was only partially transferred on March 1, 1941; that the value of the same interest on March 1, 1941, was \$43,189.37 and that the latter amount should be deducted from said \$100,000, together with another item of \$3,421.60; that the said net value of said 1943 alleged gift was \$43,389.03 and that plaintiff was liable for a gift tax thereon of \$6,713.51. Plaintiff denied in his complaint herein that there was any gift in 1943 as determined by the Commissioner with reference to such partnership interest.

Plaintiff states that the conversion of said community property partnership interest into a tenancy in common on November 16, 1943, did not involve any transfer of property, nor any transfer of community property by way of gift, from plaintiff to his wife.

On June 14, 1948, plaintiff duly and timely filed with the Collector of Internal Revenue at Los Angeles, California, a verified claim for the refund of said gift tax and interest aggregating \$7,994.19, together with interest thereon from May 29, 1947. In his said claim for refund, plaintiff set forth the facts and grounds upon which he relied in support thereof. The facts and grounds alleged in his complaint filed herein were also set forth as facts and grounds in support of his said refund claim. More than six months elapsed from the date of the filing of said refund claim by plaintiff and the date of the institution of this action, and the Commissioner of Internal Revenue did not render a decision thereon within that time, nor has said \$7,994.19, or any part thereof, been refunded to plaintiff, nor has any interest thereon been paid to plaintiff.

/s/ BRYANT ESSICK,

Subscribed and sworn to before me this 6th day of June, 1949.

[Seal] /s/ WILMA A. JONES,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Aug. 22, 1952.

Exhibit A  
Grant of Community Interest

Whereas undersigned owns an interest in real and personal property hereinafter described as his separate property, all of same having been acquired by him prior to his marriage on August 30, 1940, to Jeanette Marie Essick; and

Whereas it is the desire of undersigned to vest in his said wife a present, consisting and equal community interest in said property and in all property acquired by them from income derived therefrom, the same as if said property had been acquired by them as community property after their said marriage—

Now Therefore undersigned, in consideration of love and affection which he has and bears unto his said wife, does hereby give, grant, convey and confirm unto said Jeanette Marie Essick such an interest in said property as will vest in her a present, existing and equal community interest therein.

It is not the intention of this instrument to create a tenancy in common with said wife but rather to vest in her such an interest as she would have at the present time were said property to be acquired now from earnings of either accumulated or earned since their marriage.

The interest of undersigned in said property is that of owner of a full undivided half interest therein as partner with his father, Newman Essick; and the property referred to consists of all the assets of every kind and nature of that certain business known as Essick Manufacturing Company now

being operated by said partners at 1950 Santa Fe Street, Los Angeles, California. Among the assets of said partnership and business is included real property in the County of Los Angeles, State of California, described as follows:

All of Lots 78 and 79 and that portion of Lot 77 of the Kercheval Tract, as per map recorded in Book 19, page 61 of Miscellaneous Records, in the office of the Recorder of said County, described as follows:

Beginning at a point in the westerly line of said Lot 77, distant thereon and along the westerly line of Lot 76 north 3 degrees 45 minutes, east 68.08 feet from southwesterly corner of said Lot 76; said point of beginning being the northwesterly corner of the land conveyed to Los Angeles Chemical Company, a corporation, by deed dated February 1, 1927, and recorded in Book 6663, page 4. Official Records of said County, thence north 3 deg. 45 min. east along the westerly line of said Lots 77, 78 and 79. 95.15 feet to the northwesterly corner of said Lot 79; thence north 88 deg. 30 min. 15 sec. east along the northerly line of said Lot 79 140 feet to the northeasterly corner thereof; thence south 03 deg. 45 min. west along the easterly line of said Lots 77, 78 and 79, 94.95 feet more or less to the northeasterly corner of said land so conveyed to the Los Angeles Chemical Company; thence north 88 deg. 33 min. 40 sec. west along the northerly line of said land



so conveyed to Los Angeles Chemical Company  
140 feet to the point of beginning.

In Witness Whereof I have hereunto set my hand  
this 1st day of March, 1941.

/s/ BRYANT ESSICK.

State of California,  
County of Los Angeles—ss.

On this 1st day of March, 1941, before me Leo  
B. George, a Notary Public in and for said county  
and state, personally appeared Bryant Essick, per-  
sonally known to me to be the person whose name  
is subscribed to the foregoing instrument and he  
acknowledged to me that he executed the same.

Witness my hand and official seal.

/s/ LEO B. GEORGE,  
Notary Public in and for the county of Los An-  
geles, state of California.

Recorded March 26, 1941, in Book 18300 at Page  
129 of Official Records, County of Los Angeles,  
State of California.

MAME B. BEATTY,

Exhibit B

Property Settlement Agreement

This Agreement made and entered into this 16th  
day of November, 1943, by and between Bryant  
Essick and Jeanette Marie Essick, his wife, both  
of the City and County of Los Angeles, and State

of California. Whereas, the parties hereto are the owners of certain property including bank accounts, securities, partnership interests and other property, all more fully described in Schedule "A" attached hereto and hereby made a part hereof, all of such property being the Community Property of the parties hereto and acquired by them since their marriage on August 30, 1940, and during their residence in the State of California; and Whereas, the parties hereto desire to vest in each other an equal, existing and separate but undivided interest in and to all of such property and in all of the income derived therefrom and in all property acquired with such income, or the rents, profits and issues thereof, all as tenants in common as defined in the Civil Code of California, Sections 685 and 686; and Whereas, the parties hereto desire to vest in each other an equal, existing and separate but undivided interest in and to all income and other property derived by either or both of them as the result of their labor or the products of their minds, all as tenants in common as hereinbefore defined; Now Therefore, the parties hereto, in consideration of the love and affection which each bears to the other, do as of the date hereof, give, grant and convey unto each other such interests in and to all of such property as will immediately transmute such property ownership into tenants in common, as hereinbefore defined, and vest in them an equal, existing and separate but undivided interest therein; and do as of the date hereof terminate all of their interests

therein which may be inconsistent with such interests as tenants in common and do further agree to execute any and all instruments which may be necessary to formally record such Tenancy in common. The parties hereto do hereby further agree that all income and other property derived by either or both of them as the result of their labor or the products of their minds shall be received by them as tenants in common, as hereinbefore defined, and not as Community Property as defined in the Civil Code of California, section 687 or Sections 161a and 164. The parties hereto join in the execution of this agreement for the purpose of making and consenting to such gifts, grants, conveyances and transmutation and accepting such tenancy in common interests as their respective equal, existing and separate but undivided interests. In Witness Whereof, the parties hereto have hereunder set their hands the day and year first herein written.

BRYANT ESSICK,

JEANETTE MARIE ESSICK.

State of California, and  
County of Los Angeles—ss.

On this 16th day of November, 1943, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared, Bryant Essick and Jeanette Marie Essick, his wife, known to me to be the persons whose names are subscribed



thereto and acknowledged to me that they executed the within instrument. In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

C. L. TALLACKSON,

Notary Public in and for said County and State.

My Commission Expires Sept. 25, 1945.

Schedule "A"

(a) A one-half ( $\frac{1}{2}$ ) general partnership interest in that certain business known as Essick Machinery Company and as Essick Manufacturing Company, operated as a partnership, with its principal office located at 1950 Santa Fe Avenue, Los Angeles, California.

(b) 668 shares (now in name of Jeanette Essick) and 10 shares (now in name of Bryant Essick) of the corporate stock of West Coast Pipe and Steel Company, a California Corporation.

(c) Deposit Accounts as listed below:

Bank and Branch Security First National Trust and Savings Bank, Vernon Branch.

Type of Account: Commercial.

In the Names of: Bryant Essick or Jeanette Marie Essick.

Balance as of the first day of October, 1943, \$3,668.40.

#772 Copy of original recorded at request of Bryant Essick, Nov. 22, 1943, 9:45 A.M.

Copyist #102, Compared, Mame B. Beatty,  
County Recorder, By B. D. Manning (165), Deputy.  
\$1.50-9-M.

State of California,  
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 20417 of Official Records, Page 355, Records of Los Angeles County, and that I have carefully compared the same with the original record.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, this 27th day of May, 1949.

MAME B. BEATTY,  
County Recorder,

[Seal] By /s/ P. H. STRONG,  
Deputy.

Exhibit C

Treasury Department  
Internal Revenue Service  
417 South Hill Street  
Los Angeles 13, California

Office of

Internal Revenue Agent in Charge

Los Angeles Division

LA:GT:90D:NAB

Nov. 4, 1946

Mr. Bryant Essick

3756 Effingham Place

Los Angeles 27, California

Dear Mr. Essick:

You are advised that the determination of your gift tax liability for the calendar year 1943 discloses a deficiency of \$6,713.51, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los

Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,  
ROBERT E. HANNEGAN,  
Commissioner,

By /s/ GEORGE D. MARTIN,  
Internal Revenue Agent  
in Charge.

NAB:vac

Enclosures:

Statement

Form of waiver

LA:GT:90D:NAB

District of Sixth California

Year: 1943

Donor: Bryant Essick

Statement

Gift tax year	Liability	Assessed	Deficiency
1943	\$6,713.51	\$0.00	\$6,713.51

In making this determination of the federal gift tax liability of the above-named donor, careful consideration has been given to the report of examination dated June 13, 1946.

A copy of this letter and statement has been mailed to your representative, Mr. George H. Zeutzius, 1008 Security Building, 510 South Spring Street, Los Angeles 13, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to Net Gifts:

	Returned	Determined
Schedule A of return:		
Total gifts, other than charitable, public and similar gifts, 1943.....	\$0.00	\$53,389.03
Less: Exclusions .....	0.00	3,000.00
	<hr/>	<hr/>
Included amount of gifts .....	\$0.00	\$50,389.03
Specific exemption .....	0.00	0.00
	<hr/>	<hr/>
Net gifts .....	\$0.00	\$50,389.03

Explanation of Changes:

Schedule A of return:

Item 1 .....	\$0.00	\$53,389.03
--------------	--------	-------------

The determined value represents the value of the transfers from the donor to his wife effected under and by virtue of the property settlement agreement of November 16, 1943 by which certain property previously held as community property was transmuted into tenancies in common. Said value is computed as follows:

Full value of one fourth interest in Essick Manufacturing Company, the transfer of which was completed on November 16, 1943:

Full value of business \$400,000.00*	
one-fourth thereof .....	\$100,000.00

Less: (1) Value of same interest as of March 1, 1941 partially transferred to wife and included in 1941 gifts.....\$43,189.37

(2) Value of 329 shares of West Coast Pipe & Steel Co. passing from wife to husband as part of the property settlement and division—

@ \$10.40 per share .....	3,421.60	46,610.97
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Net value of gift .....	\$ 53,389.03
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\* In making this determination "goodwill" value equal to \$68,199.28 was added to adjusted net worth as of November 16, 1943 of \$331,800.72 to comprise the full determined value of the business of \$400,000.00.

#### Computation of Tax

	Returned	Determined
Net gifts for 1943 .....	\$ 0.00	\$50,389.03
Total net gifts for preceding years .....	9,189.37	9,189.37
Total net gifts .....	\$9,189.37	\$59,578.40
Tax on total net gifts .....	\$ 0.00	\$ 7,045.95
Tax on net gifts for preceding years .....	0.00	332.44
Tax on net gifts for 1943 .....	\$ 0.00	\$ 6,713.51
Total tax payable .....	\$ 0.00	\$ 6,713.51
Total tax assessed .....	0.00	0.00
Deficiency .....	\$ 0.00	\$ 6,713.51

[Endorsed]: Filed June 24, 1949.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, above named, and in answer to the plaintiff's complaint, admits, denies and alleges:

I.

Admits the allegations contained in paragraph I thereof.

II.

Admits the allegations contained in paragraph II thereof.

III.

Admits the allegations contained in paragraph III thereof.

IV.

Admits the allegations contained in paragraph IV thereof.

V.

Admits the allegations contained in paragraph V thereof.

VI.

In answer to paragraph VI thereof, defendant admits that, by virtue of the delivery and acceptance of said deed, the plaintiff and his wife thereupon became the co-owners of said property as California community property of the post-1927 type.

The legal conclusions asserted in the second sentence of said paragraph VI are not relevant or pertinent to the issues raised by the complaint or by the refund claim, and therefore do not call for answers thereto.



## VII.

In answer to the legal conclusions contained in paragraph VII thereof, defendant admits that all property interests, including community property interests of all spouses, are entitled to protection against unconstitutional attack. In that connection, defendant alleges that the facts set forth in plaintiff's complaint do not evidence or constitute an unconstitutional attack upon the property interests of either the plaintiff or his wife.

## VIII.

In answer to paragraph VIII thereof, defendant denies that the fair market value of the community interest received in 1941 by plaintiff's wife was equal to the fair market value of the community interest retained by the plaintiff-husband. In that connection, defendant alleges that said interest transferred by the plaintiff to his wife was never of any direct or immediate economic benefit to her until November 16, 1943, when said community co-ownership was transformed into a tenancy in common co-ownership, as alleged in paragraph X of said complaint; and that on November 16, 1943, there vested in plaintiff's wife, for the first time, the legally enforceable rights and powers, acting individually, (a) to dispose of her undivided half of said properties, either by gift or for a valuable consideration, (b) to possess, manage and control the same, (c) to contract and incur personal debts and obligations on the credit thereof (d) to sue in respect thereof, and (e) to do therewith as she pleased.



The legal conclusions, to the effect that the transaction of March 1, 1941, was legally subject to Federal gift tax and was legally taxable on the basis alleged, are neither relevant nor pertinent to the issues raised by the complaint or refund claim, and therefore do not call for answers thereto.

### IX.

The facts alleged in paragraph IX thereof are not relevant or pertinent to the issues raised by the complaint or refund claim, and therefore do not call for answers thereto.

### X.

Admits the allegations contained in paragraph X thereof.

### XI.

Admits the allegations contained in paragraph XI thereof.

### XII.

In answer to paragraph XII thereof, defendant admits that the plaintiff filed a donor's gift tax return for 1943, on the date alleged, and attached thereto a true copy of said agreement of November 16, 1943, together with a statement of the reasons why plaintiff believed that no taxable gift occurred. Defendant denies, however, that no taxable gift occurred in 1943.

The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that the return filed by the plaintiff re-

ported "all of the facts with reference to the Agreement of November 16, 1943."

### XIII.

Admits the allegations contained in paragraph XIII thereof, except that defendant alleges that \$7,955.11 was paid to the Collector on the 29th day of May, 1947, and that \$39.08 was so paid on the 2nd day of June, 1947.

### XIV.

Admits the allegations contained in paragraph XIV thereof, except that defendant denies that the Commissioner's determination that the 1943 transaction involving a taxable transfer was based upon an erroneous theory or conclusion. Defendant admits, however, that the Commissioner erred in reducing "the full value" of the undivided property interests transferred to the wife in 1943, by the March 1, 1941, full value of such interests. Defendant further admits that such error resulted in an equally erroneous reduction in the amount of the 1946 gift tax deficiency determination and in the 1947 deficiency assessment.

### XV.

In answer to paragraph XV, defendant admits that in the 1946 deficiency notice the Commissioner expressed his determination that plaintiff, on November 16, 1943, made a transfer to his wife of property interests having a value of \$100,000; admits that he determined that the net value of said

1943 gift was \$43,389.03; and admits that the Commissioner determined that the plaintiff was liable for a gift tax thereon of \$6,713.51.

The other facts alleged in said paragraph XV are neither relevant nor pertinent to the issues raised by the complaint or refund claim, and therefore do not call for answers thereto.

XVI.

Denies the allegations contained in paragraph XVI thereof.

XVII.

Admits the allegations contained in paragraph XVII thereof.

XVIII.

Admits the allegations contained in paragraph XVIII thereof.

XIV.

Admits that, at the time of the commencement of this suit, more than six months had expired from the date of the filing of said refund claim and admits that at said time the Commissioner of Internal Revenue had not rendered a decision thereon.

XX.

Admits the allegations contained in paragraph XX thereof.

Wherefore, having fully answered, defendant prays that it be hence dismissed with its costs in this behalf expended.

By /s/ E. H. MITCHELL,  
Attorney for Defendant.

[Endorsed]: Filed August 18, 1949.

[Title of District Court and Cause.]

SUPPLEMENTAL AFFIDAVIT OF BRYANT  
ESSICK IN SUPPORT OF HIS MOTION  
FOR SUMMARY JUDGMENT

State of California,  
County of Los Angeles—ss.

Bryant Essick, being first duly sworn, deposes and says that this affidavit is supplementary to the affidavit filed herein under date of June 24, 1949, in support of his motion for summary judgment; that if called upon as a witness in this case, he would further testify that on May 29, 1947, he drew his personal check, payable to the order of the Collector of Internal Revenue, for the amount of \$7,994.19, and authorized Geo. H. Zeutzius, one of his attorneys, to sign a letter addressed to the Collector of Internal Revenue, under date of May 29, 1947, in connection with the transmittal to the Collector at Los Angeles of the aforesaid check; that there is attached hereto a photostatic copy of both sides of his said check and of the original letter signed by his attorney, addressed to the Collector, transmitting said check, in payment of all gift tax and interest, the refund of which is sought by the plaintiff's complaint filed herein; that said check and letter, true photostatic copies of which are annexed hereto and by reference made part hereof, were actually delivered to the Collector at Los Angeles on May 29, 1947, and, on said letter, the Collector's cashier duly receipted the aforesaid

check of \$7,994.19; that said check was promptly paid upon presentation to the bank on which it was drawn, as shown by the photostatic copy thereof.

The purpose of this affidavit is to disprove the allegation in paragraph XIII of defendant's answer to the effect that the amount of \$7,994.19 was paid in two separate sums, part on May 29 and part on June 2, 1947.

/s/ BRYANT ESSICK.

Subscribed and sworn to before me this 16th day of September, 1949.

[Seal]     /s/ C. L. TALLACKSON,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Sept. 25, 1949.

Law Offices  
Zeutzius & Steffes  
Suite 518, Security Building  
510 South Spring Street  
Los Angeles 13, California

May 29, 1947

[Stamp]: Received with remittance May 29, '47.  
Coll. Int. Rev., Los Angeles, Cal. JR.

Collector of Internal Revenue  
Los Angeles 12, California

Attention: Mr. J. H. Struthoff, Rm. G-8  
Dear Sir:

In accordance with telephone conversation of today, there is enclosed the check of our client, Bryant Essick, payable to your order, in the amount of \$7,994.19, in payment of all gift tax and interest to date which has been assessed against him for the calendar year 1943.

Your office advised me today by telephone that the enclosed amount is correct and includes all interest to date.

Very truly yours,

/s/ GEO. H. ZEUTZIUS of  
ZEUTZIUS & STEFFES.

GHZ:brc

Enc.

Check

No. 1432

May 29, 1947.

Pay to the order of: Collector of Internal Revenue, \$7,994.19, Seven Thousand Nine Hundred Ninety Four and 19/100 Dollars.

Vernon Branch: Security First National Bank of Los Angeles, 2808 Sante Fe Avenue, Vernon.

/s/ BRYANT ESSICK.

[Stamp]: [Illegible on back of check.]

[Endorsed]: Filed Sept. 19, 1949.

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[Title of District Court and Cause.]

### DECISION

The motions for summary judgment, heretofore made, argued and submitted, are now decided as follows:

(1) The motion of the plaintiff for summary judgment, dated June 24, 1949, is granted and judgment is ordered for the plaintiff as prayed for in the Complaint, the amount to be computed in accordance with Local Rule 7(h).

(2) The motion of the defendant for summary judgment, dated April 22, 1949, is denied.



Findings and judgment to be prepared by counsel for the plaintiff under Local Rule 7.

Comment

Both parties have moved for summary judgment. Without trying to hold them to a consistency which would result in an admission that each party, by making such motion, concedes that no issuable fact remains to be decided, I am of the view, on the record, that this is, indeed, the case and that there is no issuable fact.

The only question is one of law, whether the agreement of November 16, 1943, between the plaintiff and his wife, converting the community property into a tenancy in common constituted a transfer by way of gift, which was taxable as such. (IRC, Sec. 1000(d).) A consideration of the contentions made at the oral arguments and the numerous memoranda filed before and since, leads me to the conclusion that no taxable gift arose by the transaction.

Hence the ruling above made.

Dated this 13th day of October, 1949.

/s/ LEON R. YANKWICH,  
Judge.

[Endorsed]: Filed October 13, 1949.

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for hearing on September 19, 1949, before the Honorable Leon R. Yankwich, Judge presiding, on plaintiff's and defendant's respective motions for summary judgment, and the following proceedings were had: Plaintiff appeared by Zeutzius & Steffes, by Geo. H. Zeutzius, and defendant appeared by James M. Carter, United States Attorney, by E. H. Mitchell, Assistant United States Attorney; the motions, having been briefed and argued by counsel for both parties, were submitted to the Court for decision on the complaint, answer, supporting affidavits of plaintiff, with annexed exhibits, certified copies of plaintiff's original 1941 and 1943 gift tax returns and documentary evidence of payment of the tax and date thereof; and the Court having found that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law, and having filed its decision herein granting the motion of plaintiff for summary judgment and denying the motion of defendant for summary judgment, and having ordered judgment for plaintiff as prayed for in the complaint, now, being fully advised in the premises, makes its written findings of fact and conclusions of law, as follows:

### Findings of Fact

1. This is a civil action, arising under the inter-

nal revenue laws of the United States, and is for the recovery of federal gift taxes and interest thereon alleged to have been erroneously and illegally assessed against and collected from the plaintiff, Bryant Essick. Jurisdiction is conferred by Title 28, United States Code, Section 1346.

2. Plaintiff is a citizen of the United States, a resident of the State of California, in Los Angeles County, City of Los Angeles, and within the jurisdiction of this Court.

3. Plaintiff, throughout his life, has been and now is domiciled in California. On August 30, 1940, he married Jeanette Marie Essick. At all times since, they have resided together as husband and wife, in Los Angeles, California.

4. At the time of his said marriage, and until March 1, 1941, plaintiff owned as his separate property an undivided one-half partnership interest in Essick Manufacturing Company (known also as Essick Machinery Company), an active business copartnership whose assets consisted of real and personal property situated at Los Angeles, California.

5. By deed dated, executed and delivered on March 1, 1941, plaintiff granted, transferred and conveyed to his said wife, by way of gift, a present, existing and equal community property interest in his said undivided one-half partnership interest as it existed on said date. This deed was accepted by plaintiff's wife, and it was recorded on March 26, 1941, in the office of the County Recorder for Los Angeles County, California. A copy of the deed was

furnished to the Commissioner of Internal Revenue through his examining revenue agent.

6. By virtue of the delivery and acceptance of the deed, as aforesaid, plaintiff and his wife thereupon and thereafter held said property as community property under the laws of California. One-half of the property so transferred constituted, under both California and federal applicable laws, a valid completed gift from plaintiff to his wife of a one-fourth interest in the entire partnership of said Essick Manufacturing Company.

7. The fair market value of the interest in said property, transferred and conveyed by plaintiff to his wife on March 1, 1941, was equal in amount to the fair market value of the community property interest which plaintiff retained.

8. On or about April 3, 1942, plaintiff filed with the Collector of Internal Revenue at Los Angeles a gift tax return for the calendar year 1941 on Treasury Department Form 709, reporting thereon the aforesaid transfer to his wife under date of March 1, 1941, at a value on said gift date of \$43,189.37, less an annual exclusion of \$4,000, or net taxable gifts for 1941 of \$39,189.37, against which plaintiff claimed his then allowable specific exemption of \$40,000 to the extent of said net taxable gifts. Said return was accepted by the Commissioner of Internal Revenue as filed, and more than four years passed without any question being raised by the Commissioner, or his subordinates, with respect to the correctness of said 1941 return.

9. Between March 1, 1941, and December 31, 1943, inclusive, plaintiff made no further reportable taxable gifts; on November 16, 1943, plaintiff and his said wife, Jeanette Marie Essick, in accordance with permissive provisions of California law, entered into a written agreement entitled Property Settlement Agreement, which was duly executed and acknowledged by each of them and recorded in the office of the Los Angeles County Recorder at Los Angeles, California, on or about November 22, 1943.

10. By said Agreement of November 16, 1943, plaintiff and his wife, among other things, pursuant to the laws of California, converted their entire aforesaid community property partnership interest in the Essick Manufacturing Company (also known as Essick Machinery Company) into the separate property of each as tenants in common and agreed that each should hold his and her respective undivided one-half interest free from any and all community property rights or privileges of the other spouse.

11. On October 22, 1945, plaintiff filed a donor's gift tax return with Harry C. Westover, as Collector of Internal Revenue at Los Angeles, California, for the calendar year 1943, reporting therein the facts with reference to the Agreement of November 16, 1943, attaching a true copy of said Agreement as part of the return, together with a statement of reasons why, in plaintiff's view of the transaction, no taxable gift occurred in 1943. The return indicated that there were no gifts for 1943,



that there were no net gifts and that there was no gift tax due.

12. By statutory ninety-day notice, dated November 4, 1946, the Commissioner of Internal Revenue advised plaintiff, by registered mail, that he had determined a deficiency in gift tax against plaintiff as donor, for the calendar year 1943, of \$6,713.51 which, with interest thereon of \$1,280.68, was thereafter assessed against plaintiff who, on May 29, 1947, pursuant to demand therefor, paid said tax and interest to Harry C. Westover, as Collector of Internal Revenue, at Los Angeles, California, in the aggregate amount of \$7,994.19. Said Collector promptly paid said amount into the Treasury of the United States for the use and benefit of the United States.

13. In arriving at his determination of gift tax deficiency for 1943, the Commissioner determined, so far as here material, that the aforesaid "agreement of November 16, 1943, by which certain property previously held as community property was transmuted into tenancies in common," involved a taxable transfer by plaintiff to his wife in 1943 of a one-fourth interest in the Essick Manufacturing Company co-partnership. The Commissioner, in his said determination for the year 1943, reduced the full value of the one-fourth partnership interest, as found by him for November 16, 1943, by the full value of said one-fourth partnership interest as it existed on March 1, 1941, the partnership interest

having grown in size and value between the two dates last named.

14. In his aforesaid deficiency notice of November 4, 1946, the Commissioner further determined as follows: That plaintiff completed on November 16, 1943, the transfer of a full one-fourth interest in Essick Manufacturing Company of a value of \$100,000; that the same one-fourth interest was only partially transferred on March 1, 1941; that the value of the same interest on March 1, 1941, was \$43,189.37 and that the latter amount should be deducted from said \$100,000, together with another item of \$3,421.60; that the net value of said 1943 alleged gift was \$43,389.03 and that plaintiff was liable for a gift tax thereon of \$6,713.51. (In its answer to the complaint, the defendant United States now alleges that the Commissioner erred in reducing the 1943 valuation of the partnership interest by its March 1, 1941, value. However, this admission does not affect this Court's holding of non-taxability of the 1943 transaction.)

15. On June 14, 1948, plaintiff duly filed with the aforementioned Collector of Internal Revenue at Los Angeles a verified claim for the refund of said gift tax and interest aggregating \$7,994.19 collected from the plaintiff, as aforesaid, together with interest thereon from May 29, 1947. In his said claim for refund, plaintiff set forth the facts and grounds upon which plaintiff relied in support thereof.

16. The facts and grounds alleged in plaintiff's



complaint were also set forth as facts and grounds in support of the refund claim described above.

17. At the time of the commencement of this action, more than six months had expired from the date of the filing of said refund claim by plaintiff, and the Commissioner of Internal Revenue had not rendered a decision thereon.

18. Neither the total sum of \$7,994.19, above mentioned, nor any part thereof, has been refunded to plaintiff.

Upon the foregoing findings, the Court makes and enters the following:

#### Conclusions of Law

1. Plaintiff has complied with all statutory conditions constituting conditions precedent to the institution and maintenance of this action.

2. The pleadings, affidavits, papers and admissions submitted in connection with the motions for summary judgment create no genuine issue as to any material fact. Summary judgment is proper in this case.

3. The deed executed and delivered March 1, 1941, resulted in a complete gift by the plaintiff to his wife of an undivided community property one-half interest in said partnership interest, and plaintiff correctly filed his federal gift tax return in respect thereof for 1941.

4. The written Agreement of November 16, 1943, between plaintiff and his wife, converting the community property into a tenancy in common, did not

involve, result in, or constitute a transfer by way of gift, within the meaning of the gift tax provisions of the Internal Revenue Code. (Sec. 1000(d), I.R.C.)

5. The Commissioner's determination of gift tax liability against plaintiff for the calendar year 1943 was erroneous and unlawful and his assessment of gift tax and interest thereon against plaintiff in the amounts of \$6,713.51 and \$1,280.68, respectively, was erroneous, illegal and contrary to law, in that the conversion of said community property partnership interest into a tenancy in common on November 16, 1943, did not involve any transfer of community property by way of gift from plaintiff to his wife, within the meaning of any provisions of the Internal Revenue Code. To the extent that Section 86.2(c) of Treasury Regulations 108 purports to hold as taxable the conversion into tenancies in common of community property by spouses, subsequent to 1942, they are invalid as applied to plaintiff and his wife under the facts involved.

6. Plaintiff incurred no federal gift tax liability for the calendar year 1943, and overpaid his federal gift tax for such year in the amount of \$6,713.51 and interest of \$1,280.68, both of which amounts were paid by him to the Collector of Los Angeles on May 29, 1947.

7. Under the law and the undisputed facts, plaintiff is entitled to recover judgment against the defendant for the principal amount of \$7,994.19, to-

gether with interest thereon from May 29, 1947, according to law.

Dated: October 19, 1949.

/s/ LEON R. YANKWICH,  
U. S. District Judge.

Approved as to Form:

GEORGE M. CARTER,  
U. S. Attorney,

By /s/ E. H. MITCHELL,  
Asst. U. S. Attorney.

[Endorsed]: Filed October 20, 1949.

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In the District Court of the United States in and  
for the Southern District of California, Central  
Division.

No. 9001-Y

BRYANT ESSICK,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### JUDGMENT

This cause came on for hearing on September 19, 1949, before the Honorable Leon R. Yankwich,

Judge presiding, on plaintiff's and defendant's respective motions for summary judgment, and the following proceedings were had: Plaintiff appeared by Zeutzius & Steffes, by Geo. H. Zeutzius, and defendant appeared by James M. Carter, United States Attorney, by E. H. Mitchell, Assistant United States Attorney; the motions, having been argued by counsel for both parties, were submitted to the Court for decision and the Court having found that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law, and having filed its decision granting the motion of plaintiff for summary judgment as prayed for in the complaint, and denying the motion of defendant for summary judgment, and having filed its written findings of fact and conclusions of law,

Now, Therefore, by reason of the law and the facts herein,

It Is Ordered (1) that plaintiff's motion for summary judgment be and the same hereby is granted; (2) that defendant's motion for summary judgment be and the same hereby is denied; and it is

Further Ordered, Adjudged and Decreed that the plaintiff, Bryant Essick, do have and recover judgment against the defendant, United States of America, in the amount of \$7,994.19, together with interest thereon at the rate of six (6) per centum per annum from May 29, 1947, in accordance with

Section 2411(a) of Title 28, United States Code,  
as amended.

Dated: This 19th day of October, 1949.

/s/ LEON R. YANKWICH,  
United States District Judge.

Approved as to form and computation required  
under Rule 7(h) :

JAMES M. CARTER,  
United States Attorney

By /s/ E. H. MITCHELL,  
Assistant United States  
Attorney.

Judgment entered Oct. 20, 1949. Docketed Oct.  
20, 1949, Book 61, Page 66.

EDMUND L. SMITH,  
Clerk,

By /s/ C. A. SIMMONS,  
Deputy.

[Endorsed]: Filed October 20, 1949.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Above Named Plaintiff, and to His Attor-  
neys, Geo. H. Zeutzius and A. P. G. Steffes,  
510 South Spring Street, Los Angeles 13,  
California :

You, and Each of You, Are Hereby Advised that

the defendant, United States of America, does hereby appeal from the judgment entered in the above entitled action on October 20, 1949.

Dated: This 16th day of December, 1949.

By /s/ E. H. MITCHELL,  
Attorney for Defendant,  
United States of America.

[Endorsed]: Filed December 16, 1949.

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
CAUSE ON APPEAL

Upon motion of defendant-appellant, and good cause appearing therefor:

It Is Hereby Ordered that the time within which to file the record and docket the above entitled cause in the United States Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 16th day of March, 1950.

Dated: January 20, 1950.

/s/ LEON R. YANKWICH,  
United States District Judge.

Presented by:

/s/ E. H. MITCHELL,  
Assistant U. S. Attorney.

[Endorsed]: Filed January 20, 1950.

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF  
CONTENTS OF RECORD ON APPEAL

Defendant and appellant requests that the complete record and all the proceedings and evidence in the above entitled action be incorporated in the record on appeal, including the following:

1. Complaint;
2. Defendant's Motion for Summary Judgment and for Dismissal, dated and filed April 22, 1949;
3. Plaintiff's Motion for Summary Judgment filed June 24, 1949;
4. Answer filed August 18, 1949;
5. Decision of Judge Leon R. Yankwich, dated and filed October 13, 1949;
6. Findings of Fact and Conclusions of Law, filed October 20, 1949;
7. Judgment, filed and entered October 20, 1949; Entered Judgment Book 61, page 66;
8. Plaintiff's Exhibit 2, accepted in evidence September 19, 1949;
9. Plaintiff's Exhibit 1, accepted in evidence September 19, 1949;
10. Affidavit of plaintiff, Bryant Essick, in support of his Motion for Summary Judgment, with exhibits attached, filed June 24, 1949;
11. Supplemental Affidavit of Bryant Essick in support of his Motion for Summary Judgment, with exhibits attached, filed September 19, 1949;



12. Notice of Appeal, dated and filed December 16, 1949;

13. Order Extending Time to Docket Cause on Appeal, dated and filed January 20, 1950; and

14. This designation of portions of the record to be contained in the record on appeal.

Dated: February 9, 1950.

By /s/ E. H. MITCHELL,  
Attorney for Defendant-  
Appellant.

[Endorsed]: Filed February 9, 1950.

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PLAINTIFF'S EXHIBIT No. 1

United States of America  
[Emblem]

Treasury Department  
Washington

May 20, 1949.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of Gift Tax Return for 1943 (with affidavit, copy of agreement, schedules and balance sheets attached) filed by Bryant Essick, Los Angeles, California, on file in this Department.

(Space for use of Collector)

ORIGINAL  
UNITED STATES

**GIFT TAX RETURN**  
CALENDAR YEAR 19 43

(Space for use of Bureau)

(To be filed in duplicate with the Collector of Internal Revenue for the donor's district not later than the 15th day of March following the close of the calendar year)

DONOR Bryant Eislich 940  
(Given name) (Middle name or initial) (Surname)  
ADDRESS 3756 Eppingham Place, Los Angeles  
CITIZENSHIP United States Cal.  
RESIDENCE (Same as above)

OCT 22 1943

Col. of Int. Rev.  
6th Dist. Cal.



Have you (the donor), during the calendar year indicated above, without an adequate and full consideration of money's worth, made any transfer exceeding \$3,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No.")

- By the creation of a trust (No) or the making of additions to a trust previously created (No). In either case for the benefit of a person or persons other than yourself, and with respect to which you retain no power to revoke the beneficial title to the property in yourself or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously created trust (No).
- By purchasing a life insurance policy (No) or the payment of a premium on a life insurance policy issued (No), the proceeds of which are in either case payable to a beneficiary other than your estate, and with respect to which you retained no power to vest the economic benefit in yourself or your estate or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously issued policy (No).
- By converting title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety (No). By exercising or release of a power of appointment except as provided in subparagraphs 1 and 2 of section 8 of the instructions (No).
- By converting community property to another, or by converting community property into separate property of your spouse or into a tenancy by the entirety of yourself and spouse (or other similar ownership), to the extent of your interest as prescribed by the rule set forth in section 8 of the instructions (See Schedule A).
- By any other method, direct or indirect (No).

If the answer is "Yes" to any of the foregoing, such a transfer should be fully disclosed under schedule A.

**COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR**

- Total included amount of gifts for year (item c, schedule A) (See Schedule A) none
- Total deductions for charitable, public, and similar gifts for year (item c, schedule A) none
- Specific exemption claimed (see section 11 of instructions) none
- Total deductions (item 2 plus item 3) none
- Amount of net gifts for year (item 1 minus item 4) (See Schedule A) none

**COMPUTATION OF TAX (see section 15 of instructions)**

- Amount of net gifts for year (item 5, above) (See Schedule A) none
- Total amount of net gifts for preceding years (item c, schedule C) none
- Total net gifts (item 1 plus item 2) (See Schedules A and C) 189.37
- Tax computed on item 3 0
- Tax computed on item 2 0
- Tax on net gifts for year (item 4 minus item 5) (No tax due or incurred, but see Schedule A)

**AFFIDAVIT OF PERSON FILING RETURN**

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Federal gift tax law and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedule A was made by me (the donor) during said calendar year.

Sworn to and subscribed before me this 18 day of Oct, 1945  
H. H. Allackson Notary Public  
(Signature and title of officer administering oath)

Bryant Eislich  
(Signature of donor/executor/other person)  
(Address of person filing return)

**AFFIDAVIT OF PERSON PREPARING RETURN**

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

Sworn to and subscribed before me this 22nd day of October, 1945  
Geo. H. Zeutzius  
(Signature and title of officer administering oath)  
Los Angeles, Calif.

Geo. H. Zeutzius  
(Signature of person preparing return)  
GEORGE H. ZEUTZIUS  
SUITE 1006 SECURITY BLDG.  
LOS ANGELES 13, CALIF.  
(Address of person preparing return)



Schedule A—Total Gifts During Year  
(see sections 5, 6, 7, 8, 9, 10, 12, and 16 of instructions)

(Schedule A is attached hereto)

Schedule B—Deductions for Charitable, Public, and Similar Gifts  
During Year (see sections 10 and 13 of instructions)

[No data shown]

Schedule C—Returns, Amounts of Specific Exemption, and Net  
Gifts for Preceding Years (subsequent to June 6, 1932)

Calendar Year	Collection District in Which Prior Return Was Filed	Amount of Specific Exemption	Amount of Net Gifts
1941	6th Collection District of California, Los Angeles .....	\$39,189.37	none
(a)	Totals for preceding years (without adjustment for reduced specific exemption) .....	\$39,189.37	none
(b)	Amount, if any, by which total specific exemption, line <i>a</i> , exceeds \$30,000 (see section 14 of instructions) .....		\$9,189.37
(c)	Total amount of net gifts for preceding years (total, last column, line <i>a</i> , plus amount, if any, line <i>b</i> ) .....		\$9,189.37

[Stamped]: Bureau Record.

Collector of Internal Revenue,  
Los Angeles 12, California.

Re: Bryant Essick,  
3756 Effingham Place,  
Los Angeles, California.

Sir:

I hereby solemnly swear that my delinquency in  
filing a Federal Gift Tax Return on Form 709 for  
the calendar year 1943, as required by applicable  
Gift Tax Regulations, was due to no intent, wilful

or otherwise, on my part to violate the Internal Revenue Laws or Regulations, especially if it should be held that a return was legally required, but was occasioned by unintentional oversight, the facts concerning which include the following:

I employed a tax consultant in the fall of 1943 to prepare gift tax returns for filing by March 15, 1944, relative to the transactions described in the attached return. I thereafter unintentionally lost track of the matter because of the pressure of my duties in managing a manufacturing business and the disarming of my memory resulting from having entrusted the task to said consultant in whom I had confidence and for whose services I had paid in advance. The matter next came to my attention after March 15, 1944. I promptly checked with the tax consultant to ascertain whether a gift tax return had been prepared and filed, and he apparently had no clear recollection for he reported that he checked into the matter and subsequently, on February 8, 1945, advised me that he searched his records and found no evidence that the return had been filed, but stated that he seemed to have a very clear record of having dictated a letter which was to have been attached to the return. Said tax consultant on February 8, 1945, promised to prepare the necessary return to be then and there filed with a necessary letter of explanation and for my signature. However, he stated that no tax would be payable and no penalty would be involved. On April 26, 1945, not having received the return, I again



insisted on said tax consultant immediately preparing the same and threatened to employ someone else to do so if he should fail to respond within 15 days. On May 10, 1945, said consultant again agreed to prepare the necessary gift return. He requested, that I furnish certain additional information for the purpose and not having heard from him, I, on July 13, 1945, again requested that he prepare the return immediately and forward same to me together with a letter of explanation covering his failure in the premises, to be filed with the return and an affidavit by me.

On July 24, 1945, said tax consultant returned certain papers and information which I had previously given or caused to be given to him for the purpose of preparing a gift tax return for 1943, stating that he, said tax consultant, had come to the conclusion that no gift tax return should be filed for 1943.

Thereupon through my general attorney, I immediately employed a lawyer specializing in tax matters for the purpose of having him examine into the 1943 transactions with my wife for the purpose of determining whether gift tax returns should have been filed and, if so, to prepare them for execution and filing by me. The attached return is the result of my recent employment of the attorney who has signed the return as the person preparing the same.

I respectfully request that the foregoing statement be accepted as satisfactory, that no action be

taken against me in the matter and that no penalties be imposed.

/s/ BRYANT ESSICK.

Subscribed and sworn to before me this 18 day of October, 1945. .

[Seal]     /s/ C. L. TALLACKSON,  
Notary Public in and for the County of Los  
Angeles, State of California.

My Commission Expires Sept. 25, 1949.

Bryant Essick  
3756 Effingham Place  
Los Angeles, California  
1943 Gift Tax Return  
Schedule A

On November 16, 1943, taxpayer and his wife, Jeanette Marie Essick, evenly divided certain community property into separate property, to be held by them as tenants in common under Sections 685 and 686, California Civil Code. There is attached hereto a true copy of written agreement executed by them on November 16, 1943.

Re: Community Property Partnership Interest

As a result of said community division on November 16, 1943, each spouse thereupon held as separate property an undivided one-half of a half interest in a general partnership known as



Essick Machinery Company and Essick Manufacturing Company, 1950 Santa Fe Avenue, Los Angeles, California. The value of each separate interest in said half interest in the partnership as of November 16, 1943, was \$82,950.18\* based on an aggregate net worth for the partnership of \$331,800.72. See the two partnership balance sheets attached hereto. Prior to March, 1941, the partnership interest was taxpayer-husband's separate property. By written grant of March 1, 1941, it was converted into community property and a gift tax return was filed with respect to the gift of one-half thereof to said Jeanette Marie Essick, as required by the Internal Revenue Code.

Re: Stock Belonging to Wife  
and Community Stock

The agreement of November 16, 1943, in a schedule annexed thereto, referred to 678 shares of stock in the West Coast Pipe and Steel Company, a California Corporation, of Los Angeles. Six hundred sixty eight of said 678 shares were the separate property of said Jeanette Marie Essick on November 16, 1943, by virtue of their gift to her on December 10, 1942, by taxpayer out of community property. The November 16, 1943, agreement and its annexed schedule, read together, mistakenly convey the idea

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[Handwritten marginal note]: Where is his return?

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\*This value results by adding 21/24 of the total increase in partnership net worth between 12/31/42 and 12/31/43, to the net worth as of 12/31/42.

that said 668 shares may have been community property on November 16, 1943. Actually, only the 10 remaining shares standing in the name of taxpayer-husband were community property. Jeanette Marie Essick made a gift to taxpayer on November 16, 1943, of 329 of the 668 separate property shares, standing in her name, and relinquished her community interest in the remaining 10 shares to taxpayer as his separate property. The stock was traceable originally to taxpayer's separate property through the aforesaid partnership, which acquired said West Coast stock and then distributed the same. The value of each share on November 16, 1943, was \$32.81678, based on a corporate net worth of \$71,830.83, according to the attached balance sheet dated October 30, 1943. The stock of the corporation on November 16, 1943, consisted of 1360 outstanding shares held by taxpayer, his wife, his father and mother and five other individuals. The stock was and is not sold on any market. The last sales prior to November 16, 1943, occurred in 1942, at \$6.50 per share. They were stock purchases from many stockholders who had refused \$6 per share but were willing to accept \$6.50.

Re: Joint Commercial Bank Account

The agreement of November 16, 1943, read with its annexed schedule, purported to effect the division of a joint commercial bank account in the names of taxpayer and his said wife with the Security-First

National Trust and Savings Bank, Vernon Branch. The account was maintained for household and joint living expense purposes exclusively, was never changed from a joint account on the books of the bank, and was never used since for any other than the aforesaid purposes. It should never have been described in the schedule and was never the subject of a gift between the parties nor was it ever reduced to the separate property of either. The total amount in the account as of November 16, 1943, was \$3,144.49.

#### Re: Taxpayer's Position and Conclusions

All community property which was divided between taxpayer and his wife on November 16, 1943, had been the subject of, or was traceable to, a taxable transfer of separate property of and by taxpayer to his wife, Jeanette Marie Essick, on March 1, 1941, by written grant; that is to say, he converted his separate property on March 1, 1941, into community property. In 1941, the conversion of separate property of a spouse into community property was taxable under Sec. 1000(a) and (b) I.R.C. as a gift to the other spouse to the extent of one-half thereof. Sec. 1000 (a) and (b) remains unchanged. Therefore, taxpayer was required to and did file a gift tax return for 1941, reporting as taxable the gift to his wife of one-half of his half interest in said Essick Machinery Company partnership, which was the subject of the March 1, 1941, transfer.

The 678 shares of West Coast referred to above were acquired by said partnership by purchase early

in 1942 and later, in June 1942, were distributed by it and, when distributed to taxpayer, constituted community property. When 668 of the 678 shares were given by taxpayer to his wife on December 10, 1942, as her separate property, the transaction involved a gift by the husband of one-half thereof (or 334 shares) out of community property, because one-half belonged to him and the other half belonged to her. Such was the Treasury's interpretation of the gift tax law respecting gifts prior to January 1, 1943. (CCH Fed. Gift Tax 1945, Par. 3935.175.)

. Taxpayer's position with reference to these transactions is as follows:

1. The division on November 16, 1943, of the community property consisting of the partnership interest did not result in any taxable gift to Jeanette Marie Essick because one-half of said community property already belonged to her and had been the subject of a taxable gift to her in March 1941, by reason of Sec. 1000 (a) (b) I.R.C. If sec. 1000 (d) I.R.C., be held applicable to the 1943 transaction, then Sec. 1000 (d) should be construed as requiring Jeannette Marie Essick's half of the community traceable to the March 1941 gift to be treated as having been derived from her separate property within the meaning of the language of Sec. 1000 (d) which excepts the wife's separate property from the "gifts of the husband" category. If this reasoning is rejected and it is determined that Sec. 1000 (d) operates to require the return and taxation of one-half of the community interest as a gift by taxpayer-husband to his wife in 1943, then taxpayer asserts

that Sec. 1000 (d) cannot validly impose a gift tax on the conversion of community into separate property in a case, such as this, where the community property became such prior to January 1, 1943, as the result of a taxable gift of his separate property to his wife, as shown by his 1941 return. The wife's community half, having been once validly subjected to the gift tax provisions on the 1941 transfer to her, cannot again be subjected to gift tax on division of the community and partition to her of her half share therein. To subject her interest to a gift tax in 1943 would result in unlawful double taxation on the fantastic theory that the husband twice made a gift of the same property to his wife, and that the second gift occurred notwithstanding the fact her ownership under the first gift remained uninterrupted and no retransfer had been made to her husband. If Sec. 1000 (d) must be so construed, it is discriminatory, invalid and violative of the "due process" clause of the Fifth Amendment. Once property has been validly taxed on the legal and statutory concept that it was transferred to a spouse, it cannot thereafter again be subjected to the same type of tax on a new theory that it has again been transferred to the same transferee spouse, when the parties merely partition or divide their existing legal interests.

Furthermore, Sec. 1000 (d), by its terms, does not apply to divisions of community property between spouses. The section provides that the property excepted from the "gifts of the husband" category "shall be considered to be gifts of the wife." Cer-



tainly, Congress didn't intend to treat the partition to the wife of her undivided community interest as a gift by herself to herself to the extent that the original source thereof was economically attributable to her. Yet such necessarily is the meaning ascribed to the section by the regulations (Sec. 86.2 (c), in providing for the inclusion as gifts of divisions of community property occurring after 1942. Obviously, the language of sec. 1000 (d), given its plain and ordinary meaning and read in conjunction with Sec. 1000 (a) and (b), embraces only gifts made to third persons by the marital community—not to divisions of community between spouses. Clearly, the current gift tax regulations are invalid insofar as they attempt to include within the section's operation the division of community property between spouses and the present exemption of transfers of separate into community property.

2. With respect to the relinquishment to taxpayer by Jeanette Marie Essick of her community interest in the 10 shares of West Coast Pipe and Steel Company stock on November 16, 1943, no taxable gift occurred under the Treasury's interpretation of the law. The shares were received by taxpayer in 1942 in a partnership distribution and the partnership interest at said time was community property. However, the partnership interest had been his separate property, originally, prior to March 1, 1941, when he converted it into community property.

3. The transfer on November 16, 1943, to taxpayer of 329 of the 668 shares of West Coast stock



standing in the name of Jeanette Marie Essick, being her separate property by previous gift to her, did not result in any gift by taxpayer to his wife, even assuming validity of Sec. 1000 (d). The latter section by its terms embraces only gifts of community property. Any reference to the shares in the November 16, 1943, Agreement was contrary to the facts insofar as concerns any implication therein that the shares were community property. Certificate No. 125 was issued to taxpayer for the 329 shares transferred to him on November 16, 1943.

4. The \$3,144.49 household bank account was never the subject of a completed or taxable gift.

5. There were no reportable or taxable gifts by the taxpayer-husband in 1943, but because of the possibility the Bureau of Internal Revenue may claim otherwise, all facts are given herewith in good faith in order to avoid any basis for an assertion that taxpayer has violated the revenue laws.

6. If it should be determined by the Commissioner that a taxable gift occurred in 1943, by virtue of Sec. 1000 (d), I.R.C. taxpayer further states that said subsection is invalid and unconstitutional also for substantially the same reasons as were advanced in connection with Sec. 811 (e) (2) I.R.C., in *United States v. Rompel, Jr., Admr. (Herbst Est.)* and *Fernandez v. Wiener*, in which the Supreme Court noted jurisdiction on May 7, 1945.

#### Property Settlement Agreement

This Agreement made and entered into this 16th day of November, 1943, by and between Bryant

Essick and Jeanette Marie Essick, his wife, both of the City and County of Los Angeles, and State of California.

Whereas, the parties hereto are the owners of certain property including bank accounts, securities, partnership interests and other property, all more fully described in Schedule "A" attached hereto and hereby made a part hereof, all of such property being the Community Property of the parties hereto and acquired by them since their marriage on August 30, 1940, and during their residence in the State of California; and

Whereas, the parties hereto desire to vest in each other an equal, existing and separate but undivided interest in and to all of such property and in all of the income derived therefrom and in all property acquired with such income, or the rents, profits and issues thereof, all as tenants in common as defined in the Civil Code of California, Sections 685 and 686; and

Whereas, the parties hereto desire to vest in each other an equal, existing and separate but undivided interest in and to all income and other property derived by either or both of them as the result of their labor or the products of their minds, all as tenants in common as hereinbefore defined;

Now Therefore, the parties hereto, in consideration of the love and affection which each bears to

Now, Therefore, the parties hereto, in consideration of the love and affection which each bears to the other, do as of the date hereof, give, grant and convey unto each other such interests in and to all

of such property as will immediately transmute such property ownership into tenants in common, as hereinbefore defined, and vest in them an equal, existing and separate but undivided interest therein; and do as of the date hereof terminate all of their interests therein which may be inconsistent with such interests as tenants in common and do further agree to execute any and all instruments which may be necessary to formally record such Tenancy in common.

The parties hereto do hereby further agree that all income and other property derived by either or both of them as the result of their labor or the products of their minds shall be received by them as tenants in common, as hereinbefore defined, and not as Community Property as defined in the Civil Code of California, Section 687 or Sections 161a and 164.

The parties hereto join in the execution of this agreement for the purpose of making and consenting to such gifts, grants, conveyances and transmutation and accepting such tenancy in common interests as their respective equal, existing and separate but undivided interests.

In Witness Whereof, the parties hereto have hereunder set their hands the day and year first herein written.

/s/ BRYANT ESSICK,

/s/ JEANETTE MARIE ESSICK.

State of California and  
County of Los Angeles—ss.

On this 16th day of November, 1943, before me,

the undersigned, a Notary Public, in and for said County and State, residing therein, duly commissioned and sworn, personally appeared, Bryant Essick and Jeanette Marie Essick, his wife, known to me to be the persons whose names are subscribed thereto and acknowledged to me that they executed the within instrument.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

/s/ C. L. FALLACKSON,  
Notary Public in and for said County and State.  
Schedule "A"

(a) A one-half ( $1\frac{1}{2}$ ) general partnership interest in that certain business known as Essick Machinery Company and as Essick Manufacturing Company, operated as a partnership, with its principal office located at 1950 Santa Fe Avenue, Los Angeles, California.

(b) 668 shares (now in name of Jeanette Essick) and 10 shares (now in name of Bryant Essick) of the corporate stock of West Coast Pipe and Steel Company, a California Corporation.

(c) Deposit Accounts as listed below: Bank and Branch: Security First National Trust and Savings Bank, Vernon Branch. Type of Account: Commercial. In the Names of: Bryant Essick or Jeanette Marie Essick. Balance as of the first day of October, 1943, \$3,668.40.

[Stamp]: Bureau Record.

West Coast Pipe and Steel Company  
1950 Santa Fe Aven., Los Angeles, California  
Balance Sheet

October 30, 1943

## Assets

Cash in Bank			205.84
Receivables			
Accounts—Doubtful	10517.11		
Notes—Doubtful	529.80		11046.91
Suspense a/c (Prepaid Bldg. Repairs)			4053.62

[Handwritten marginal note] : Largely bad and uncollected.

## Real Estate

West Coast			
Land		31971.21	
Improvements	19957.09		
Less Reserve	12092.87	7864.22	39835.43

1950 Santa Fe			
Land		10500.00	
Improvements	22355.46		
Less Reserve	444.48	21910.98	32410.98

2428 East 14th St.			
Land		6000.00	
Improvements	8000.00		
Less Reserve	x x	8000.00	14000.00

2427 East 15th St.			
Land		6000.00	
Improvements	15000.00		
Less Reserve	x x	15000.00	21000.00
			35000.00

Given			
Land		3000.00	
Improvements	200.00		
Less Reserve	x x	200.00	3200.00

La Quinta			
Land		687.19	111133.60

Investments			
Sundry Stocks			2650.50

Total Assets 129090.47

[Handwritten marginal note] : Any of this contributed by partnership? No.

## Liabilities

Payroll Taxes		348.42	
Accounts Payable		None	
Trust Deed Notes			
1950 Santa Fe	23000.00		
14th & 15th Sts.	33911.22	56911.22	57259.64

Capital	136000.00		
Less Deficit	64169.17		
Net Worth			71830.83

Total Liabilities & Net Worth 129090.47

[Stamp] : Bureau Record.





Balance Sheet  
Essick Manufacturing Company  
A Partnership

December 31, 1942—Annual

Assets			
Current			
Cash		150.00	
Bank		54996.35	
Accounts Receivable	113103.04		
Notes Receivable	5756.51		
	<u>118859.55</u>		
Less Reserve for Bad & Doubtful	7085.56	111773.99	
Inventories	<u>109673.42</u>		
Net Current Assets			276593.76
Fixed			
Trucks & Autos	11926.57		
Less Reserve for Depr.	9236.48	2690.09	
	<u>2690.09</u>		
Jigs, Dies & Tools		43.91	
Patterns		355.00	
Machinery & Equipment	59322.18		
Less Reserve for Depr.	10784.82		
	<u>48537.36</u>		
Furniture & Fixtures	5178.57		
Less Reserve for Depr.	1204.01	3974.56	
	<u>3974.56</u>		
Total Fixed Assets		55600.92	
First Trust Deeds Receivable		33500.00	
Total Available Assets			365694.68
Contingent			
Leasehold Improvements	3372.39		
Less Reserve for Amortization	1973.17	1399.22	
	<u>1399.22</u>		
Leasehold Deposits		545.00	
Insurance Deposits		957.64	
Prepaid Excise Tax		128.97	
Prepaid Insurance		1456.68	
		<u>4487.51</u>	
Total Contingent Assets			4487.51
Total Assets			370182.19
Liabilities			
Payables Owing			
Accounts Payable		7389.34	
Taxes Owing			
Accrued Payroll Taxes	5402.67		
Accrued Sales Tax	1403.62		
Accrued Compensation Ins.	536.30	7342.59	
	<u>14731.93</u>		
Total Current Liabilities			14731.93
Special Reserves			
Reserve for Advertising	1000.00		
Reserve for Guaranties	5000.00		
Reserve for Fed. Inc. Tax	94487.00	100487.00	
	<u>100487.00</u>		
Handwritten marginal note] : This is personal but was paid by partners.			
Total Owing plus Reserves		115218.93	
Net Worth December 31, 1942		254963.26	
Total Liabilities and Net Worth			370182.19
Stamp] : Bureau Record.			



Balance Sheet  
Essick Manufacturing Company  
A Partnership

December 31st, 1943—Annual

[Handwritten marginal note] : No balance sheet available as of 11/16/43

Assets

Current Assets

Cash		200.00
Bank		33385.61
Accounts Receivable	127984.25	
Notes Receivable	13963.48	
Total	141947.73	
Less Reserve for Bad & Doubtful	6917.31	135030.42
Inventory		100220.53
Net Current Assets		268836.56

Investment Assets

First Trust Deeds Receivable		67060.69
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[Handwritten marginal note] : From West Coast Pipe & Steel Co.

Fixed Assets

Trucks & Autos	12935.82	
Less Reserve	9405.29	3530.53
Machinery & Equipment	72205.96	
Less Reserve	23963.43	48442.53
Furniture & Fixtures	7892.92	
Less Reserve	1643.98	6248.94
Net Fixed Assets		58222.00

Total Available Assets		394119.25
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Contingent Assets

Leasehold Improvements	4297.78	
Less Reserve	3179.47	1118.31
Leasehold Deposits		410.00
Insurance Deposits		1107.43
Prepaid Excise Tax		128.97
Unexpired Insurance		1278.25

Total Contingent Assets		4042.96
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Total Assets		398162.21
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Liabilities

Payables Owing

Accounts Payable	19407.77	
Payroll Payable	4771.07	
Notes Payable	None	
Total Payables		24178.84

Taxes Owing

Accrued Payroll Taxes	17864.09	
Accrued Sales Taxes	2505.98	
Accrued Compensation Taxes	866.76	
Total Taxes		21236.83

Total Current Liabilities		45415.67
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Special Reserves

For Advertising		1000.00
For Guaranties		7165.14
For Estimated Income Taxes		
to December 31, 1943	31803.90	

[Handwritten marginal note] : This is personal but was paid by partners and hence affected value of the gift.

Less US Treasury "C" Certificates on hand	30000.00	1803.90
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Total Special Reserves		9969.04
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Total Liabilities & Sp. Reserves		55384.71
Net Worth		342777.50

Total Liabilities and Net Worth		398162.21
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Stamp] : Bureau Record.

Admitted Sept. 19, 1949.



PLAINTIFF'S EXHIBIT No. 2

United States of America

[Emblem]

Treasury Department

Washington

May 23, 1949.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of Gift Tax Return for 1941 (with affidavit and schedules attached), filed by Bryant Essick, Los Angeles, California, on file in this Department.





(Space for use of Collector)

ORIGINAL  
UNITED STATES  
GIFT TAX RETURN

CALENDAR YEAR 19 41

(Space for use of Bureau)

(To be filed in duplicate with the Collector of Internal Revenue for the donor's district not later than the 15th day of March following the close of the calendar year)

DONOR Bryant none Easiok  
(Given name) (Middle name or initial) (Surname)  
ADDRESS 3756 Effingham Place L.A. Calif  
CITIZENSHIP American  
RESIDENCE 3756 Effingham Place

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, any transfer exceeding \$4,000 in value (or regardless of value if in trust or a future interest) as follows? (Answer "Yes" or "No.")

1. By the creation of a trust (or the making of additions to a trust previously created) for the benefit of a person or persons, other than yourself, and with respect to which you retain no power to revoke the beneficial title to the property in yourself or to change the beneficiaries or self-proportionate benefits, or by relinquishing every such power that was retained in a previously created trust NO;
2. By permitting a beneficiary, other than yourself, to receive the income from a trust created by you and with respect to which you retained the power to revoke the beneficial title to the property in yourself or to change the beneficiaries or self-proportionate benefits, or by relinquishing every such power that was retained in a previously created trust NO;
3. By the purchase of property from a family for the payment of a premium on a life insurance policy for the payment of which you are liable, or by the payment of the proceeds of which are payable to a beneficiary other than yourself, estate, and with respect to which you retained no power to revoke the economic benefit in yourself or your estate NO;
4. By permitting another to withdraw funds from a joint bank account which were deposited by you NO;
5. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety NO;
6. By any other method, direct or indirect YES.

If the answer is "Yes" to any of the foregoing, such a transfer should be fully disclosed under schedule A.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

Total included amount of gifts for year (item c, schedule A) \$ 39189.37

Total deductions for charitable, public, and similar gifts for year (item c, schedule B) \$

Specific exemption claimed (see section 10 of instructions) 39189.37

Total deductions (item 2 plus item 3) 39189.37

Amount of net gifts for year (item 1 minus item 4) \$ none

COMPUTATION OF TAX (see section 14 of instructions)

Amount of net gifts for year (item 5, above) \$ none

Total amount of net gifts for preceding years (item c, schedule C) none

Total net gifts (item 1 plus item 2) \$ 39189.37

Tax computed on item 3 \$ 39189.37

Tax computed on item 2 \$ 39189.37

Tax on net gifts for year without addition of defense tax (item 4 minus item 5) none

Defense tax (see second and third paragraphs of section 14 of instructions) none

Total tax payable for year (item 6 plus item 7) \$ none

AFFIDAVIT OF PERSON FILING RETURN

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Federal gift tax law and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedule A was made by me (the donor) during said calendar year.

Sworn to and subscribed before me this 34 day of April, 1942  
(Signature of donor/executor/other person)  
Notary Public  
3756 Effingham Place, L.A., Calif.  
(Address of person filing return)

AFFIDAVIT OF PERSON PREPARING RETURN

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

Sworn to and subscribed before me this 34 day of April, 1942  
(Signature of person preparing return)  
Notary Public  
8993 Dalton Ave.  
(Address of person preparing return)

My Commission Expires Sept. 25, 1945



Schedule A—Total Gifts During Year  
(see sections 5, 6, 7, 9, 11, and 15 of instructions)

Item No.	Description of Gift, Motive, and Donee's Name and Address	Date of Gift	Value at Date of Gift
	Direct gift to my wife, Jeanette Marie Essick at 3756 Effingham Place, Los Angeles, Calif. ....	3-1-41	\$43189.37
	One half of my interest in the Essick Machinery Company, 1950 Santa Fe Ave., Los Angeles, Calif. a partnership as per net worth as shown on the attached Balance Sheet, Feb. 28, 1941. Values as shown on the Balance Sheet are taken from the books of the Company and are cost values. Profit and Loss Statement for the past five years are attached herewith.		
(a)	Total .....		\$43189.37
(b)	Less total exclusions not exceeding \$4,000 for each donee (except gifts in trust or of future interests) .....		4000.00
(c)	Total included amount of gifts for year .....		\$39189.37

[Marginal note in pencil : accepted JWC]

Schedule B—Deductions for Charitable, Public, and Similar Gifts During Year (see sections 8, 9, and 12 of instructions)  
[No data shown]

Schedule C—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (subsequent to June 6, 1932)  
[No data shown]

Name Bryant Essick  
Street Address 3756 Effingham Place  
City Los Angeles, State Calif.

Date : Apr. 3, 1942

Collector of Internal Revenue,  
Los Angeles, California.

Sir :—

I hereby solemnly swear (or affirm) that my delinquency in filing return of Gift Tax on Form 709 for the period year of 1941

as required by the Act of 1940 was due to no intent to violate the law but was occasioned by being overlooked prior to Mar. 15, 1942. This was in no way overlooked intentionally and trust that you will accept same

I, therefore, respectfully request that this statement be accepted as satisfactory and that no further action be taken against me in the matter.

/s/ Bryant Essick,  
3756 Effingham Place,  
Los Angeles.

Subscribed and sworn to before me this 3d day of April 1942.

Seal /s/ C. L. Tallackson.

Notary Public or Deputy Collector

My Commission Expires Sept. 25, 1945.

[Stamped] : Received Apr. 6, 1942, Coll. Int. Rev. Los Angeles, Cal.

Essick Machinery Co.  
A Partnership  
Balance Sheet  
Feb. 28, 1941

Assets

Cash on Hand .....		30.71
Accounts Receivable .....	25264.91	
Notes Receivable .....	41193.31	
	<u>66458.22</u>	
Less Reserve for Bad Debts .....	5965.06	60493.16
Merchandise Inventory .....		<u>132619.65</u>
Total Current Assets .....		<u>193143.52</u>
Trucks & Autos .....	9809.75	
Machinery & Equipment .....	23519.13	
Furniture & Fixtures .....	3014.96	
Patterns .....	355.00	
	<u>36698.84</u>	
Less Reserve for Depreciation .....	11936.22	24762.62
Real Estate & Building .....		34047.26
Deposits, Rental & Insurance .....		1206.87
Leasehold Improvements .....		1593.05
Prepaid Insurance .....		<u>671.34</u>
Total Assets .....		<u><u>255424.66</u></u>

## Liabilities

Cash in Bank .....	1206.83	
Accounts Payable .....	49174.06	
Notes Payable .....	30000.00	
	<hr/>	
Total Current Liabilities .....		80380.89
Accrued Sales Tax .....	1038.34	
Accrued Pay Roll Taxes .....	1223.78	
Reserve for Advertising .....	24.14	2286.26
	<hr/>	<hr/>
Total Liabilities .....		82667.15
Net Worth, Dec. 31, 1940 .....	183341.97	
Loss for Jan. & Feb., 1941 .....	10584.46	
	<hr/>	
Net Worth, Feb. 28, 1941 .....		172757.51
		<hr/>
Total Liabilities & Net Worth .....		255424.66
		<hr/> <hr/>

Note: Newman Essick and Bryant Essick are equal partners.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 71, inclusive, contain the original Complaint for Recovery of Federal Gift Taxes; Motion of Defendant for Summary Judgment and for Dismissal with Prejudice; Plaintiff's Motion for Summary Judgment; Affidavit of Plaintiff Bryant Essick, in Support of His Motion for Summary Judgment; Answer; Supplemental Affidavit of Bryant Essick in Support of His Motion for Summary Judgment; Decision; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Order Extending Time to Docket Appeal and Designation of Record on Appeal which, together with Original Plaintiff's Exhibits Nos. 1 and 2, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 10 day of March, A.D. 1950.

EDMUND L. SMITH,

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.



[Endorsed]: No. 12497. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Bryant Essick, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 11, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit  
No. 12497

UNITED STATES OF AMERICA,  
Appellant,  
vs.

BRYANT ESSICK,  
Appellee.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY

On appeal from the judgment in the above entitled action, the appellant will urge and rely upon the following points, to wit:

I.

The Trial Court erred in concluding, as a matter of law (Conclusions of Law, Nos. 4 and 5), that

the November 16, 1943, conversion of post-1947 type California community property into property held by the same spouses as tenants in common, did not involve a taxable gift from the taxpayer to his wife within the meaning of Section 1000(d), or of any other provisions, of the Internal Revenue Code.

## II.

The Trial Court erred in concluding, as a matter of law (Conclusion of Law No. 5), that to the extent that Section 86.2(c) of Treasury Regulations, 108 purports to make taxable the conversion into tenancies in common of post-1927 community property by spouses, subsequent to 1942, it is invalid as applied to the appellee and his wife under the facts involved in this case.

## III.

The Trial Court's Conclusions of Law numbered 6 and 7 are supported by neither the facts nor the law.

## IV.

In the alternative, appellant contends that the March 1941 transfer by the taxpayer to his wife of a California community interest in his separate property was not a completed gift to her of one-half of such separate property within the meaning of the provisions of Section 1000 of the Internal Revenue Code, as such section existed on said date, and as construed by the Supreme Court, since he re-

tained until November 16, 1943, the exclusive right and power to manage, control and possess his wife's half, and to pay his personal and separate debts in part therewith, without her consent. The transfer did not become a taxable gift under said Section 1000 (as it existed in 1941) until November 16, 1943, when the donor for the first time relinquished and transferred to the donee his said rights and powers over her half.

As a matter of law, the Trial Court's Finding 6 and Conclusion No. 3, to the contrary, are erroneous.

#### V.

If by the words "equal community property interest," as used in Finding 5, the Trial Court meant that the wife, by such March, 1941, grant, personally acquired exercisable rights and powers over and in respect of her undivided one-half of such newly created community property, equal to those of her husband, then such Finding is supported by neither evidence nor law.

There is no evidence or law to support the Trial Court's Finding 7 to the effect that the community interest transferred to the wife on March 1, 1941, had a fair market value equal to the community property interest retained by the taxpayer.

There is no evidence or law to support such Finding 7 to the effect that the undivided community interest then acquired by the wife had any market value whatever, either fair or otherwise.

There is no evidence or law to support such Find-

ing 7 to the effect that the wife's said community interest, as such, was marketable.

Dated: March 9, 1950.

ERNEST A. TOLIN,  
United States Attorney.

E. H. MITCHELL,  
Assistant U.S. Attorney.

By /s/ E. H. MITCHELL,  
Attorneys for Appellant.

[Endorsed]: Filed March 11, 1950.